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Attorney for Alan Newman

BEFORE THE BOARD OF OIL, GAS AND MINING  
 DEPARTMENT OF NATURAL RESOURCES  
 IN AND FOR THE STATE OF UTAH  
 1594 W North Temple, Suite 1210, PO Box 145801, Salt Lake City, Utah 84114-5801  
 (801) 538-5340, (801) 538-3940 (Fax)

IN THE MATTER OF THE PETITION BY  
 THE DIVISION OF OIL, GAS AND  
 MINING FOR AN ORDER:  
 (1) CONFIRMING THE WITHDRAWAL  
 OF THE NOTICE OF INTENTION TO  
 COMMENCE SMALL MINING  
 OPERATIONS S/027/0111;  
 (2) TO FORFEIT THE CERTIFICATE OF  
 DEPOSIT NO 3887 FROM NEVADA  
 STATE BANK, TO DIRECT THE  
 DIVISION TO COMPLETE  
 RECLAMATION; (3) TO INITIATE A  
 CIVIL SUIT AGAINST NEVADA STATE  
 BANK AND ALAN NEWMAN TO  
 RECOVER COSTS OF RECLAMATION;  
 AND (4) TO TAKE ALL OTHER ACTIONS  
 NECESSARY TO RECLAIM THE LANDS  
 AT N1/2 of NE1/4 of SW1/4, S31, T19S,  
 R18W SLB&M Millard County, Utah

**SUPPLEMENTAL RESPONSE OF  
 ALAN NEWMAN**

DOCKET NO.: 2012-022  
 CASE NO.: S/027/0111

**ADDITIONAL RELIEF SOUGHT**

In addition to the relief previously sought, respondent requests the Board to order the Division to return the entire proceeds of the \$12,000 bond to the party entitled to it.

### STATEMENT OF ADDITIONAL FACTS

1. Respondent has been advised by the Division that the Division has already received the \$12,000.00 bond amount.

2. Respondent has been advised by Jerry Mansfield, BLM geologist for the Fillmore office, that no stipulations were attached to the subject Contract for Sale of Mineral Materials. He states the box for attached stipulations was checked in error. The contract has no reclamation requirements.

### ADDITIONAL REASONS FOR GRANTING RELIEF

The Division has already received the \$12,000 bond amount and respondent has been discharged through bankruptcy from liability under his contracts. The Division has no grounds for suing the respondent. However, the Division also has no grounds for keeping any part of the \$12,000.

Respondent is not required to perform reclamation work under the terms of his contract with the BLM for purchase of mineral materials under the federal Materials Act. The regulations at 43 CFR Group 3600 indicate the applicable reclamation standards are the ones stated in the contract:

§ 3602.14. What kind of financial security does BLM require?

(a) For contracts of \$2,000 or more, BLM will require a performance bond of an amount sufficient to meet the reclamation standards provided for in the contract, but at least \$500. If you have a sales contract from a community pit or common use area and you pay a reclamation fee, BLM will not require you to post a performance bond. [emphasis added]

The mineral materials were removed from federal land under the Materials Act, 30 USC 601 - 604 and the regulations at 43 CFR, Group 3600. Neither the State, the Division, nor the Board has jurisdiction to impose additional requirements or regulation. This is in addition to lacking jurisdiction under Utah Code Ann. 40-8-1 *et seq.*

The Small Mine Reclamation Contract and the Notice of Intention to Commence Small Mining Operations are ultra vires, void, and unenforceable, including their requirement of a bond. Further, respondent has been discharged in bankruptcy from liability under these agreements if they were valid. The Board should so find and direct the Division to return the bond proceeds, in full, to the parties entitled to receive them.

Dated this 20<sup>th</sup> day of July, 2012.



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Attorney for Alan Newman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the forgoing  
**SUPPLEMENTAL RESPONSE OF ALAN NEWMAN**, to be personally served or mailed  
first class mail, postage prepaid, the 20<sup>th</sup> day of July, 2012, to:

Cameron Johnson  
Steve Alder  
Assistant Attorneys General  
Counsel for Division of Oil, Gas, and Mining  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84114-5801

Mike Johnson, Esq.  
Assistant Attorney General  
Department of Natural Resources  
Utah Board of Oil, Gas & Mining  
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Salt Lake City, UT 84114

Nevada State Bank  
400 N Green Valley PKWY  
Henderson, NV 89074

  
A handwritten signature in dark ink, appearing to read "Alan Newman", is written over a horizontal line.